

Congress of the United States

Washington, DC 20515

0844

August 8, 2013

The Honorable Mignon L. Clyburn
Acting Chairwoman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairwoman Clyburn:

In 2008, Congress passed the Rail Safety Improvement Act of 2008 (P.L. 110-432) (RSIA) requiring U.S. railroads to install positive train control (PTC) by December 31, 2015 on specified rail lines over which passengers or certain hazardous materials are transported. PTC is a complex undertaking. As noted by the Federal Rail Administration (FRA), "PTC implementation, on the scale required by the RSIA, has never been attempted anywhere in the world." In order to meet the statutory mandate, railroads will be required to place as many as 22,000 antennas along the railroad lines to facilitate communications from the track detectors.

We understand that Federal Communications Commission (FCC) staff has advised the railroads that the construction of antennas are subject to the FCC's environmental and historic review processes and regulations, including the use of the FCC's Tower Construction Notification System (TCNS). We also understand that FCC staff has further advised the railroads that they should not proceed with PTC antenna construction without going through these processes.

The FCC's historic review process currently contemplates separate notice to affected State Historic Preservation Officers (SHPO) and Native American Tribes for each of the 22,000 proposed antenna construction applications. This includes the approximately 97 percent of antennas that are only wayside "sticks" between ten and sixty feet tall and located on railroad-owned rights of way. Apparently recognizing that the FCC's processes cannot accommodate the railroads' statutorily mandated PTC implementation schedule, the FCC staff has advised the railroads not to proceed with any applications for environmental and historic review until an approach for expediting the notification and review processes can be determined. Accordingly, PTC antenna installation activities by the railroads have been essentially put on hold until the FCC staff advises the railroads that they can start again.

We recognize that FCC staff has been in discussion with the Federal Railroad Administration, the Advisory Council on Historic Preservation, and the rail industry seeking a resolution to the issue. However, the FCC staff has not committed to a firm timeline or schedule for determining a resolution or process for the expedited approval of the approximately 97 percent of antennas that are located along the railroad rights of way. The delay caused by this freeze and the FCC's environmental and historic review processes adversely affects the railroads' ability to deploy PTC and delays implementation of safety systems mandated by Congress.

It is our understanding that this is one of a number of challenges facing the railroads as they attempt to deploy PTC. We urge the FCC to move expeditiously to put a process in place to facilitate the timely deployment of PTC, which will ensure that this critical safety enhancement is successfully implemented on a national level. As we continue to monitor the FCC's involvement with PTC implementation, we would appreciate periodic updates from you or your staff on efforts to resolve this matter.

If you have any questions, please have a member of your staff contact David Redl on the Energy and Committee staff at (202) 225-2927 or Mike Friedberg on the Transportation and Infrastructure Committee staff at (202) 226-0727.

Sincerely,



Fred Upton
Chairman
Committee on Energy and Commerce



Bill Shuster
Chairman
Committee on Transportation and
Infrastructure



Greg Walden
Chairman
Subcommittee on Communications
and Technology



Jeff Denham
Chairman
Subcommittee on Railroads, Pipelines and
Hazardous Materials

cc: The Honorable Henry Waxman
The Honorable Nick J. Rahall, II
The Honorable Anna Eshoo
The Honorable Corrine Brown
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai



FEDERAL COMMUNICATIONS COMMISSION

November 21, 2013

Mignon L. Clyburn
Commissioner

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton:

Thank you for your letter regarding the Commission's review of infrastructure needed to deploy positive train control (PTC) under federal environmental and historic preservation statutes. As you note in your letter, the Rail Safety Improvement Act of 2008 requires railroads to install PTC on specified rail lines by December 31, 2015. The National Environmental Policy Act of 1969 (NEPA) and the National Historic Preservation Act of 1966 (NHPA) require the Commission to consider the environmental effects of PTC infrastructure. I understand your concern about the effect of the Commission's existing environmental and historic preservation review processes under NEPA and NHPA on the railroads' ability to deploy PTC.

The Commission recognizes the importance of PTC and is doing, and will continue to do, everything within its power to facilitate implementation by the statutory deadline, including helping identify spectrum, and expediting licensing and tower review. The Commission's Wireless Telecommunications Bureau has been working closely with the railroads on licensing and spectrum issues related to PTC since 2010. From this contact, the staff believed that the railroads primarily would use existing towers and other existing infrastructure to mount the necessary PTC antennas. Only in May 2013 did the freight railroads make clear that they would need to deploy approximately 20,000 20-to-65 foot poles in the railroad right of way, as well as a much smaller number of large towers to support base station antennas.

In order to fulfill the Commission's obligations under NEPA and NHPA, the Commission's environmental rules (47 C.F.R. §§ 1.1301-1.1319) impose specific requirements on licensees. Staff hold regular training seminars for all interested parties, including the railroads, on the Commission's environmental and historic preservation review processes. The most recent seminar held on May 14, 2013, included presentations by representatives from the Advisory Council on Historic Preservation (ACHP), the National Conference of State Historic Preservation Officers and members of Tribal Nations.

As you note, the Commission's rules and processes, and especially those governing historic preservation review under Section 106 of the NHPA, were not designed to accommodate the review of over 20,000 poles in less than two years. The staff therefore has asked the

railroads not to submit their wayside poles for Section 106 review until a more expedited process is developed. We have not asked the railroads to postpone any aspect of the environmental review process for the larger base station structures.

Since learning of the extent of new construction by the freight railroads to implement PTC, the staff has worked closely with the railroad industry, the Federal Railroad Administration (FRA), and parties with a role in the Section 106 process to develop protocols that will expedite the review process while protecting important historic and archeological resources. In particular, the ACHP staff has advised the Commission to propose a Program Comment, which would establish an alternative process to tailor Section 106 review to the circumstances of PTC. The ACHP's rules require the Commission, in developing a Program Comment, to consult with State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers, local governments, and other interested stakeholders, which includes government-to-government consultation with federally recognized Indian Tribes consistent with the federal government's trust responsibility. The staff has taken important steps to begin this process. It sent factual materials to all 566 Native Nations on June 25, 2013, and to the SHPOs on July 22, 2013. The staff held conference calls with the SHPOs on August 5 and August 13, 2013. On August 20, 2013, staff presented critical information about PTC and conducted a listening session at the annual conference of the National Association of Tribal Historic Preservation Officers.

On September 27, 2013, the Wireless Telecommunications Bureau and the Commission's Office of Native Affairs and Policy released scoping documents to initiate Tribal consultation and seek public comment on development of a proposed program comment to govern review of the PTC facilities. As part of the Tribal consultation process FCC staff will be attending meetings with interested Tribal Nations and the freight railroads over the next few months. Comments on the scoping document are due on November 15, 2013.

In addition, some railroads have asked the Commission to prioritize the environmental review process for PTC deployments along specific track segments. Staff is working with these railroads to accommodate as many of these requests as possible, recognizing that expediting such reviews will be a labor-intensive process until more efficient procedures are developed. We expect that these early deployments will serve as demonstration projects to help all parties evaluate the extent to which the PTC wayside facilities have the potential to adversely affect historic properties. Commission staff also partially granted one railroad's recent request for an experimental authorization so that railroad can test its PTC system along a segment of its track pursuant to FRA requirements.

The railroads have asked the Commission to complete a Program Comment – including the ACHP's required 45-day review process – by the end of 2013. Commission staff is working diligently toward completing the Program Comment process in a timely manner. However, the extensive consultation that is required, the large number of interested parties (including Native Nations with sovereign status), and the scope of the issues render it difficult to commit to a specific completion date. We are also working on efficiencies to reduce burdens for the railroads

Page 3—The Honorable Fred Upton

regarding other aspects of the environmental review process, including consultation with the U.S. Fish and Wildlife Service under the Endangered Species Act and a streamlined process for filing Environmental Assessments with the Commission.

I have asked the staff to keep you and your staff updated on their progress. Please let me know if you have any further questions.

Sincerely,



Mignon L. Clyburn



FEDERAL COMMUNICATIONS COMMISSION

November 21, 2013

Mignon L. Clyburn
Commissioner

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Walden:

Thank you for your letter regarding the Commission's review of infrastructure needed to deploy positive train control (PTC) under federal environmental and historic preservation statutes. As you note in your letter, the Rail Safety Improvement Act of 2008 requires railroads to install PTC on specified rail lines by December 31, 2015. The National Environmental Policy Act of 1969 (NEPA) and the National Historic Preservation Act of 1966 (NHPA) require the Commission to consider the environmental effects of PTC infrastructure. I understand your concern about the effect of the Commission's existing environmental and historic preservation review processes under NEPA and NHPA on the railroads' ability to deploy PTC.

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In order to fulfill the Commission's obligations under NEPA and NHPA, the Commission's environmental rules (47 C.F.R. §§ 1.1301-1.1319) impose specific requirements on licensees. Staff hold regular training seminars for all interested parties, including the railroads, on the Commission's environmental and historic preservation review processes. The most recent seminar held on May 14, 2013, included presentations by representatives from the Advisory Council on Historic Preservation (ACHP), the National Conference of State Historic Preservation Officers and members of Tribal Nations.

As you note, the Commission's rules and processes, and especially those governing historic preservation review under Section 106 of the NHPA, were not designed to accommodate

the review of over 20,000 poles in less than two years. The staff therefore has asked the railroads not to submit their wayside poles for Section 106 review until a more expedited process is developed. We have not asked the railroads to postpone any aspect of the environmental review process for the larger base station structures.

Since learning of the extent of new construction by the freight railroads to implement PTC, the staff has worked closely with the railroad industry, the Federal Railroad Administration (FRA), and parties with a role in the Section 106 process to develop protocols that will expedite the review process while protecting important historic and archeological resources. In particular, the ACHP staff has advised the Commission to propose a Program Comment, which would establish an alternative process to tailor Section 106 review to the circumstances of PTC. The ACHP's rules require the Commission, in developing a Program Comment, to consult with State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers, local governments, and other interested stakeholders, which includes government-to-government consultation with federally recognized Indian Tribes consistent with the federal government's trust responsibility. The staff has taken important steps to begin this process. It sent factual materials to all 566 Native Nations on June 25, 2013, and to the SHPOs on July 22, 2013. The staff held conference calls with the SHPOs on August 5 and August 13, 2013. On August 20, 2013, staff presented critical information about PTC and conducted a listening session at the annual conference of the National Association of Tribal Historic Preservation Officers.

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In addition, some railroads have asked the Commission to prioritize the environmental review process for PTC deployments along specific track segments. Staff is working with these railroads to accommodate as many of these requests as possible, recognizing that expediting such reviews will be a labor-intensive process until more efficient procedures are developed. We expect that these early deployments will serve as demonstration projects to help all parties evaluate the extent to which the PTC wayside facilities have the potential to adversely affect historic properties. Commission staff also partially granted one railroad's recent request for an experimental authorization so that railroad can test its PTC system along a segment of its track pursuant to FRA requirements.

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I have asked the staff to keep you and your staff updated on their progress. Please let me know if you have any further questions.

Sincerely,



Mignon L. Clyburn



FEDERAL COMMUNICATIONS COMMISSION

November 21, 2013

Mignon L. Clyburn
Commissioner

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
2165 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Shuster:

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Mignon L. Clyburn



FEDERAL COMMUNICATIONS COMMISSION

November 21, 2013

Mignon L. Clyburn
Commissioner

The Honorable Jeff Denham
Chairman
Subcommittee on Railroads, Pipelines and Hazardous Materials
Committee on Transportation and Infrastructure
U.S. House of Representatives
2165 Rayburn House Office Building
Washington, D.C. 20515

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